IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)
Plaintiff,	)
v.	) Civil Action No. 1:16-cv-1522 (TJM/DJS)
FALCON PETROLEUM, LLC,	)
RGLL, INC., and	)
GRJH, INC.,	)
Defendants.	)

CONSENT DECREE

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CONSENT DECREE

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendants Falcon Petroleum, LLC, RGLL, Inc., and GRJH, Inc. (hereinafter "Defendants") violated the federal underground storage tank regulations promulgated under Sections 9003(a) and 9003(c) of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991 *et seq*. (hereinafter "the Act" or "RCRA"), and codified at 40 C.F.R. Part 280.

B. The Complaint alleges that at all relevant times the Defendants were "owners" and/or "operators" of underground storage tanks ("USTs") at eight gasoline service stations in the State of New York: (a) Cobble Pond Farms, 4005 Route 2, Cropseyville, New York (four USTs); (b) Congress Sunoco, 281 Congress Street, Troy, New York (four USTs); (c) Cobble Pond Farms, 3360 Route 9, Valatie, New York (three USTs); (d) Hoosick Sunoco, 558 Hoosick Street, Troy, New York (five USTs); (e) Fairview Citgo, 178 Fairview Avenue, Hudson, New York (one UST with two compartments); (f) Quaker and Bay Sunoco, 234 Quaker Road, Queensbury, New York (four USTs); (g) Exit 11 Citgo, 10 Round Lake Road, Ballston Lake, New York (four USTs); (h) Cobble Pond Farms, 107 Main Street, Queensbury, New York (one UST with three compartments).

C. The Complaint alleges that Defendants have failed at each of the eight gasoline service stations to meet one or more of the requirements mandated by RCRA and its implementing regulations, including the requirements to (1) install and maintain overfill protection equipment on USTs; (2) perform release detection monitoring on USTs; (3) perform release detection monitoring on underground pressurized piping; (4) install and maintain an automatic line leak detector ("ALLD") on underground pressurized piping; (5) perform annual testing on the ALLD on underground pressurized piping; and (6) maintain and provide release detection monitoring records.

D. Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

E. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

F. NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 9006(a)(1) of RCRA, 42 U.S.C. § 6991e(a)(1), and over the Parties.

2. Venue lies in this District pursuant to Section 9006(a)(1) of RCRA, 42 U.S.C. § 6991e(a)(1), and 28 U.S.C. §§ 1391 (b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendants conducted business in, this judicial district.

3. For purposes of this Consent Decree (Decree), or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and over any such action to enforce this Decree and over Defendants, and consent to venue in this judicial district.

4. For purposes of this Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

II. APPLICABILITY

5. The obligations of this Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

6. No transfer of ownership or operation of the UST systems at the Facilities identified in Appendix C, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented, except as otherwise provided in the subsections below:

a. Where the Facility to be transferred is one of the Facilities subject to Section VI (Supplemental Environmental Project), Defendants shall prior to transfer complete any upgrade of the release detection systems required at the Facility pursuant to Section V (Compliance Requirements); and

b. Where the Facility to be transferred is one of the Facilities subject to Section VI (Supplemental Environmental Project), Defendants shall condition any transfer of ownership or operation of the UST systems upon the transferee's agreement to allow Defendants access to the Facility so that Defendants may continue to undertake the obligations required by Section VI (Supplemental Environmental Project) until the termination of those obligations; and

c. Nothing herein shall preclude the Defendants from entering into a lease agreement in the future with a different operator at any of Defendants' Facilities provided that the Defendants remain the owner of the UST systems at the Facility and give notice of the change of lessee to the United States at least 60 Days prior to such transfer; and

d. If as a result of a prospective transfer any of the Defendants would end up being neither an owner(s) nor operator(s) of the UST systems at a Facility, the Defendants may be relieved of the future performance of the specific obligations (provided they have not yet come due) set forth in paragraphs 14, 15.c, 15. d., 15.f. and 16 in Section V (Compliance Requirements") that pertain to the UST systems at the Facility. For the Defendants to be relieved of these specific obligations, they must first satisfy the following conditions: The Defendants shall: (i) have paid any stipulated penalty that has accrued pursuant to Section VIII (Stipulated Penalties) in connection with the Facility; (ii) have satisfied the provisions of the Consent Decree and complied with all federal, state, and local requirements regarding the UST systems at the Facility; (iii) have certified (and submitted the certification to the United States) that there are no open spills, continuing releases, or threats of releases at the Facility; (iv) have certified (and submitted the certification to the United States) that the transfer is a bona fide transfer of ownership to an unrelated third party and that the transferee is not affiliated with the Defendants by contractual, corporate or financial relationship (other than the relationship created by the transfer); (v) have submitted documentation to the United States supporting the certification in (iv) above; and (vi) have certified (and submitted the certification to the United States) that all information submitted in support of the transfer is truthful; and

e. At least thirty (30) Days prior to any transfer of ownership or the execution of a lease agreement with a different operator, Defendants shall provide to the proposed transferee a summary of any substantive obligations required under this Decree that would apply to the transferee/lessee ("Summary Disclosure") and shall remind the transferee/lessee of applicable federal UST and state tank rules. Defendants shall simultaneously provide written notice of the prospective transfer of ownership, together with a copy of any proposed written agreement regarding the UST systems, to EPA Region 2, the United States Attorney for the Northern District of New York, and the United States Department of Justice, in accordance with Section XIV (Notices); Defendants shall submit the Summary Disclosure to EPA for approval no later than thirty (30) Days after the Date of Lodging or at least thirty days before the Summary Disclosure is to be given to the transferee, whichever date is later; and

f. No later than five (5) Days after the execution or completion of a transfer of ownership or a lease agreement with a different operator, Defendants shall provide an executed copy of the written agreement regarding the UST systems to the United States, in accordance with Section XIV (Notices).

Any transfer of ownership or operation of a UST system at a Facility identified in Appendix C without complying with this Paragraph constitutes a violation of this Decree as provided in Paragraph 48(b)(1) and/or 50(d) of Section VIII (Stipulated Penalties).

7. Defendants shall provide a copy of this Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree. With respect to contractors, Defendants shall instead provide a summary checklist of the substantive obligations required under this Decree to any contractor retained to perform work required under this Decree ("Contractor Checklist"). Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Decree. Defendants shall submit the Contractor Checklist to EPA for approval no later than thirty (30) Days after the Date of Lodging.

8. In any action to enforce this Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

III. DEFINITIONS

9. Terms used in this Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;

c. "Date of Lodging" shall mean the date on which this Decree is filed with the Court, as recorded on the Court's docket;

d. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

e. "Defendants" shall mean Falcon Petroleum, LLC, RGLL, Inc., and GRJH, Inc.;

f. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

g. "Effective Date" shall have the definition provided in Section XV (Effective Date);

h. "Facility" or "Facilities" shall mean the retail gasoline service stations, individually or collectively, containing one or more underground storage tanks ("USTs") owned and/or operated by Defendants and located in the State of New York, as listed in Appendix A. "Appendix B Facilities" shall mean a subset of Facilities in the State of New York, as listed in Appendix B, at which Defendants shall install electronic release detection monitoring equipment. "Appendix C Facilities" shall mean twenty-three (23) Facilities in the State of New York, as well as two (2) Facilities in Connecticut and one (1) Facility in New Hampshire, as listed in Appendix C, at which Defendants shall perform a Supplemental Environmental Project.

i. "Operator" shall have the meaning defined in Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and in 40 C.F.R. § 280.12;

j. "Owner" shall have the meaning defined in Section 9001(4) of RCRA, 42 U.S.C. § 6991(4), and in 40 C.F.R. § 280.12;

k. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

l. "Parties" shall mean the United States and Defendants;

m. "Section" shall mean a portion of this Decree identified by a roman numeral;

n. "State" shall mean the State of New York;

o. "United States" shall mean the United States of America, acting on behalf of EPA;

p. "UST" shall mean "underground storage tank", which shall have the meaning defined in Section 9001(1), 42 U.S.C. § 6991(1), and in 40 C.F.R. § 280.12;

q. "UST system" shall have the meaning defined in 40 C.F.R. § 280.12;

r. "Vendor" shall mean any contractor or subcontractor whose duties include performing any Work required under this Decree; and

s. "Work" shall mean all of the obligations set forth in Section V (Compliance Requirements) and Section VI (Supplemental Environmental Project).

IV. CIVIL PENALTY

10. Defendants shall pay the principal amount of $60,000 as a civil penalty, plus an additional sum for interest, as explained below. Payment shall be made over six (6) months in three (3) installments, as follows:

a. Within thirty (30) Days of the Effective Date, Defendants shall make the first installment payment of $30,000, plus interest on the balance.

b. Within one hundred and twenty (120) Days of the Effective Date, Defendants shall make the second installment payment of $20,000, plus interest on the balance.

c. Within one hundred and eighty (180) Days of the Effective Date, Defendants shall make the final installment payment of $10,000, plus interest on the balance.

Each of the installment payments shall include an additional sum for interest accrued at the rate specified in 28 U.S.C. § 1961, on the unpaid portion of the principal amount calculated from the date of lodging of this Decree until the date of each payment.

11. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Northern District of New York after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify all payments required to be made in accordance with this Decree. The FLU will provide the payment instructions to:

Alicia Metz
P.O. Box 522
67 Main Street
Millerton, NY 12546
aliciametz1@gmail.com

on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

12. At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States in accordance with Section XIV (Notices); and (iii) to EPA Region 2 in accordance with Section XIV (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Decree in *U.S. v. Falcon Petroleum, LLC., RGLL, Inc., and GRJH, Inc.* and shall reference the civil action number, CDCS Number and DOJ case number 90-7-1-09896.

13. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating their federal income tax.

V. COMPLIANCE REQUIREMENTS

14. Defendants shall, starting as of the Date of Lodging, comply with all requirements of RCRA and the UST regulations alleged to have been violated with respect to all UST systems in the Facilities identified in the Complaint, and identified as a subset of the Facilities listed in Appendix A. These requirements include, without limitation, Defendants' legal obligations to: (1) install and maintain overfill protection equipment on USTs; (2) perform release detection monitoring on USTs; (3) perform release detection monitoring on underground pressurized piping; (4) install and maintain automatic line leak detectors ("ALLD") on underground pressurized piping; (5) perform annual testing on the ALLDs on underground pressurized piping; and (6) maintain and provide to the EPA Team Leader listed in Section XIV release detection monitoring records and all other records required by 40 C.F.R. Part 280.

15. Defendants shall install, if not already installed, fully automated electronic release detection equipment that meets the performance standards of 40 C.F.R. §§ 280.43 and 280.44 on the UST systems and associated piping owned and/or operated by Defendants at each of the seven (7) Facilities identified in Appendix B (Appendix B Facilities). At the Appendix B Facilities, Defendants shall:

a. Install, if not already installed, fully automated electronic release detection equipment manufactured by Veeder-Root or a similar type of entity (the "Vendor"), which includes automatic tank gauging for single wall tanks, interstitial monitoring for double wall tanks, and self-testing electronic line leak detectors that are certified by the manufacturer to meet the ALLD testing requirements of 40 C.F.R Part 280.44(a) for any pressurized piping or American-type suction piping on UST systems, according to the schedule for completion of installation in subparagraph (b) below. The equipment shall also include both audible and visible alarms on the console's panels to alert station personnel of any alarm conditions that the installed sensors detect. This fully automated release detection equipment shall serve as Defendants' primary method of release detection for the tanks and pressurized piping or American-type suction piping associated with the UST systems at the Appendix B Facilities;

b. Complete the installation of all fully automated release detection equipment by no later than fifteen (15) months after the Effective Date;

c. Operate and maintain in good working condition the automated release detection equipment on the UST systems at the Appendix B Facilities for a minimum of three (3) years from the date that the equipment is installed at all Appendix B Facilities pursuant to subparagraph (b) above or from the Date of Lodging, whichever is later. The automated release detection equipment shall log and store all alarms, including those arising from potential or suspected releases, spill or overflow tanks, malfunction/failure of components, and disconnection of components. The Defendants shall, no later than thirty (30) days after the Date of Lodging, provide a report to the persons identified in Section XIV (Notices) identifying the Appendix B Facilities at which such equipment was installed prior to the Date of Lodging;

d. Provide summaries of the information gathered by the automated release detection equipment pursuant to subparagraph (c) above in biannual reports to EPA pursuant to Section VII (Reporting Requirements). Upon EPA's request, the Defendants shall provide any information in their possession obtained or reported by the above-described monitoring equipment. In addition, Defendants' contract with the Vendor shall require that, upon the Defendants' request, the Vendor shall provide to Defendants any information in its possession obtained or reported by the above-described monitoring equipment that the Defendants do not already have in their possession and need to obtain to satisfy their compliance obligations under RCRA, the UST regulations, and the Decree;

e. By March 30, 2017, Defendants shall provide a written certification of their compliance with all applicable release detection requirements for both tanks and piping (Certificate of Compliance) at all Appendix B Facilities for the last quarter of 2016 (*i.e.*, October to December 2016). The Certificate of Compliance shall state as follows:

> "Except with regard to any exceptions described below, Falcon Petroleum, LLC, RGLL, Inc. and GRJH, Inc. certify that they operated the release detection equipment for both tanks and piping at the Facilities in compliance with the Consent Decree entered in *United States v. Falcon Petroleum, LLC., RGLL, Inc., and GRJH, Inc.* [insert Civil Action number] during the last quarter of 2016."

f. Beginning no later than March 30, 2018, Defendants shall provide a Certificate of Compliance with all applicable release detection requirements for both tanks and piping at all Appendix B Facilities during the prior calendar year. The Certificate of Compliance shall state as follows:

> "Except for the instances described below, Falcon Petroleum, LLC, RGLL, Inc. and GRJH, Inc., certify that they operated the release detection equipment for both tanks and piping at the Facilities in compliance with the Consent Decree entered in *United States v. Falcon Petroleum, LLC., RGLL, Inc., and GRJH, Inc.* [insert Civil Action number] during the prior calendar year."

The Certificate of Compliance shall be submitted thereafter on an annual basis by no later than March 30 for each year this Decree is in effect until termination of this Decree.

g. The Certificates of Compliance provided pursuant to subparagraphs (e) and (f) shall also include the certification language set forth in Paragraph 42. At the time of the certification, if there is an instance(s) of non-compliance or where release detection monitoring, monitoring records, or other observations or information indicate a suspected release(s) or release(s) has occurred, Defendants shall notify EPA, according to Section XIV (Notices), and provide specific information concerning any instance(s) of non-compliance or where release detection records indicate a suspected release(s) or release(s) has occurred. The specific information to be provided includes the name of the facility and UST system, the precise nature of the problem and the exact time period in which it occurred, and a description of the remedial steps taken and the date when they were taken.

16. Defendants shall maintain records of release detection at all Appendix A Facilities or readily available at a centralized location and shall make such records available upon EPA's request.

17. Defendants shall ensure that the contract between the Vendor and Defendants provides that the Vendor maintains all records generated pursuant to Paragraph 15(c) above for a minimum of four (4) years after the termination of this Decree, and that the Vendor shall provide such records to Defendants upon request. Nothing in this subparagraph shall release Defendants from their obligation to comply with any applicable regulations under 40 C.F.R. Part 280 that require Defendants to maintain records.

18. Defendants certify by signing this Decree that their UST systems at the Facilities identified in the Complaint are at the time of signing this Decree in compliance with all requirements of 40 C.F.R. Part 280, violations of which are alleged in the Complaint. Defendants shall further certify no later than thirty (30) days after the Date of Lodging that their UST systems at the Facilities in Appendix A are, to the best of their knowledge after diligent investigation, in compliance with all requirements of 40 C.F.R. Part 280.

19. Defendants certify by signing this Decree that all cost information provided to EPA, namely the cost information submitted on July 3, 2015 and November 12, 2015, regarding the installation of electronic release detection equipment, was complete and accurate at the time.

20. This Decree in no way relieves the Defendants of their responsibility to comply with all applicable federal, state and/or local laws, regulations, and/or permits. Compliance with this Decree shall not constitute compliance with said laws, regulations or permit.

21. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Decree, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

22. If the submission is approved pursuant to the above Paragraph at (a), Defendants shall take all actions required by the plan, report, or other document, in accordance with the

schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to the above Paragraph at (b) or (c), Defendants shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

23. If the submission is disapproved in whole or in part pursuant to Paragraph 21(c) or (d), Defendants shall, within thirty (30) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

24. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the thirty-day (30) period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

25. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

26. Defendants shall implement a Supplemental Environmental Project (SEP), requiring the installation of a centralized monitoring system for all UST systems in twenty-three (23) Facilities in New York, two (2) Facilities in Connecticut and one (1) Facility in New Hampshire as identified in Appendix C (Appendix C Facilities). Defendants shall implement this SEP in accordance with all provisions of this Decree, including but not limited to those set forth in this Section and Appendix D (SEP Specifications). Defendants shall complete installation of the centralized monitoring systems at the Appendix C Facilities by no later than fifteen (15) months after the Effective Date.

a. The SEP requires the installation of any and all communication components (*e.g.*, modems, wiring) necessary to insure the commencement of operation of centralized monitoring of all UST systems at the Appendix C Facilities within fifteen (15) months of the Effective Date. The centralized monitoring system shall collect all data generated by the release detection monitoring system required by Paragraph 15 and electronically transmit the data to designated central monitoring location(s), as provided in Appendix D.

27. These systems shall record and maintain that alarm data as well as system testing data at a centralized location. These systems shall be configured for remote monitoring by the Vendor's central data monitoring system. All alarms and testing data shall be transmitted to the Vendor's data center and retained by the Vendor at a data center or other central location (which shall include the ability to access electronic records stored elsewhere on remote servers) for a period of five (5) years. If an alarm is reported, the Vendor, acting on Defendants' behalf, shall initiate contact of the personnel responsible for addressing the alarm condition and conducting any necessary response, repair, and/or investigation work.

28. The deadline for completion of installation of this SEP is fifteen (15) months after the Effective Date.

29. Defendants shall operate and maintain in good working condition the centralized monitoring equipment for all UST systems in the Appendix C Facilities for a minimum of five (5) years from the date that the centralized monitoring systems are installed and fully operating (*i.e.*, gathering and disseminating data to a central location) pursuant to this Section and Appendix D at each and every Appendix C Facility. This five-year period shall start to run on the same day for all Appendix C Facilities starting no later than fifteen (15) months after the Effective Date. If at the end of the five-year period the amount of the Defendants' eligible SEP expenditures as approved by EPA, is less than the amount of the estimated eligible SEP costs identified in Paragraph 31(a) by a difference that is greater than 10% of the estimated costs, the Defendants shall operate and maintain the centralized monitoring systems for an additional two years.

30. Defendants are responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree, including but not limited to the requirements in Appendix D. Defendants may use contractors or consultants in planning and implementing the SEP.

31. With regard to the SEP, Defendants certify to the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP, and subsequently approved by EPA as eligible SEP costs, is complete and accurate, and that Defendants' estimate of total SEP eligible costs as approved by EPA, to install the centralized monitoring SEP and to operate and maintain the centralized monitoring SEP for five (5) years after completion of installation, is at least $226,000;

b. that, as of the date of executing this Decree, Defendants are not required to perform or develop the SEP by any federal, state, or local law or regulation and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendants have not received and will not receive credit for the SEP in any other enforcement action;

e. that Defendants will not receive any reimbursement for any portion of the SEP from any other person; and

f. Defendants are not parties to any open federal financial assistance transaction that is funding the SEP described herein. Defendants further certify that, to the best of their knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that could fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

32. SEP Installation Completion Report

a. Within sixty (60) Days after the date set for completion of the installation of the centralized monitoring equipment for the SEP (Paragraphs 27 and 29), Defendants shall submit a report (SEP Installation Completion Report) to the United States, in accordance with Section XIV (Notices). The SEP Installation Completion Report shall contain the following information:

(1) a detailed description of the installation of the centralized monitoring equipment;

(2) a description of any problems encountered in installing the centralized monitoring equipment for the SEP and the solutions thereto;

(3) an itemized list of all eligible SEP costs expended;

(4) certification that the centralized monitoring equipment for the SEP has been fully installed pursuant to the provisions of this Decree; and

(5) a description of the environmental and public health benefits expected to result from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. Within one (1) year of the submittal of the SEP Installation Completion Report and annually thereafter until termination of the Decree pursuant to Section XVIII (Termination), Defendants shall submit a written certification (SEP O&M Annual Certification) confirming that the SEP's performance requirements, as enumerated in Appendix D, have been met and that operation and maintenance obligations have been fully implemented during the reporting period pursuant to the provisions of this Decree.

c. Defendants may employ a Vendor/Contractor in the preparation of the SEP Installation Completion Report, so long as the Defendants remain responsible for the submission and its submittal to EPA.

33. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendants' compliance with the requirements of the SEP.

34. After receiving the SEP Installation Completion Report and the SEP O&M Annual Certifications, the United States shall timely notify Defendants whether or not Defendants have satisfactorily completed the SEP. If Defendants have not completed the SEP in accordance with this Decree, stipulated penalties may be assessed under Section VIII (Stipulated Penalties).

35. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

36. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall include the certification language set forth in Paragraph 43.

37. Any public statement, oral or written, in print, film, or other media, made by Defendants making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *United States v. Falcon Petroleum, LLC., RGLL, Inc., and GRJH, Inc*, taken on behalf of the U.S. Environmental Protection Agency under the Resource Conservation and Recovery Act"

38. For federal income tax purposes, Defendants agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VII. REPORTING REQUIREMENTS

39. Defendant shall submit the following Biennial Reports in hard copy or by electronic mail to the United States and EPA:

a. Within sixty (60) Days after the end of June and December (*i.e.*, by August 30, and February 30) after lodging of this Decree, until termination of this Decree pursuant to Section XVIII (Termination), Defendants shall submit a report for the preceding six months (Biennial Report) that shall include descriptive information regarding (1) problems encountered or anticipated, together with implemented or proposed solutions; (2) status of any permit applications relevant to the implementation of this Decree; and (3) a discussion of Defendants' progress in satisfying their obligations in connection with Section V (Compliance Requirements) and Section VI (Supplemental Environmental Project) including, at a minimum, a narrative description of activities undertaken, status of any construction or compliance measures, and a summary of costs incurred in connection with the SEP since the previous report; and (4) summaries, as required by Paragraph 15(d), of the information gathered by the automated release detection systems at the Facilities.

b. The Biennial Report shall also include a description of any non-compliance with the requirements of this Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendants violate, or have reason to believe that they may violate, any requirement of this Decree, Defendants shall notify the United States of such violation and its likely duration, in writing, within ten (10) working Days of the Day Defendants first become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the Biennial Report. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the notice required by Section IX (Force Majeure).

40. Whenever any violation of this Decree or of any applicable permits or any other event affecting Defendants' performance under this Decree, or the performance of their Facilities, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

41. All Biennial Reports shall be submitted to the persons designated in Section XIV (Notices).

42. Each Biennial Report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

43. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

44. The reporting requirements of this Decree do not relieve Defendants of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

45. Any information provided pursuant to this Decree may be used by the Parties in any proceeding to enforce the provisions of this Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

46. Defendants shall be liable for stipulated penalties to the United States for violations of this Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

47. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendants shall pay a stipulated penalty of $5,000 per Day for each Day that any payment is late.

48. Compliance Milestones.

a. The following stipulated penalties shall accrue per violation per Day per Facility for each violation at a particular Facility of the requirements identified in subparagraph (b) of this Paragraph:

Penalty Per Violation Per Day	Period of Noncompliance
$750.00	1st through 20th Day
$1,500.00	21st through 45th Day
$3,500.00	46th Day and beyond

b. Requirements:

(1) Comply with the legal obligations referenced in Paragraph 6;

(2) Comply with the legal obligations referenced in Paragraph 7;

(3) Comply with the legal obligations referenced in Paragraph 14;

(4) Install fully automated release detection equipment for UST systems at the Appendix B Facilities pursuant to Paragraph 15(a) and (b);

(5) Operate fully automated release detection equipment for UST systems at the Appendix B Facilities pursuant to Paragraph 15(c);

(6) Provide written certifications of compliance with applicable release detection requirements at the Appendix B Facilities pursuant to Paragraph 15(e), (f) and (g);

(7) Comply with the legal obligations referenced in Paragraph 16; and

(8) Comply with the legal obligations referenced in Paragraph 17.

If in the course of providing the Certificates of Compliance pursuant to paragraphs 15(e) and 15(f), Defendants timely notify EPA in accordance with Section XIV as required by Paragraph 15(g), there shall be no stipulated penalties due for noncompliance with the release detection monitoring and release detection recordkeeping requirements, provided that: (a) there have been no more than two months of noncompliance at all of the Appendix B facilities during the reporting period required to be covered by the Certificate of Compliance, (b) the Defendants have taken all actions required to remedy the problem promptly upon discovery of the violation(s), and (c) the Defendants in their notification to EPA under Paragraph 15(g) have provided all the information required by that Paragraph.

49. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Paragraph 6, Section VII (Reporting Requirements) and Section VI (Supplemental Environmental Project):

Penalty Per Violation Per Day	Period of Noncompliance
$750.00	1st through 20th Day
$1,500.00	21st through 45th Day
$2,500.00	46th Day and beyond

50. SEP Compliance.

a. Unless the Defendants have paid a stipulated penalty pursuant to subparagraph (b) below, if Defendants fail to satisfactorily comply with any of the deadlines set forth in Section VI (Supplemental Environmental Project), Defendants shall pay stipulated penalties for each Day for which they fail to satisfactorily comply with a SEP deadline, as follows:

Penalty Per Violation Per Day	Period of Noncompliance
$750.00	1st through 20th Day
$1,500.00	21st through 45th Day
$3,500.00	46th Day and beyond

b. If Defendants fail either (i) to install the required equipment for the SEP at six (6) or more facilities within fifteen (15) months of the Effective Date; or (ii) to operate the centralized monitoring systems pursuant to the terms of this Decree for at least two (2) years after the date on which the installation of the required equipment had occurred; or (iii) if Defendants halt or abandon work on the SEP, then Defendants shall pay a stipulated penalty of $150,000. The penalty under this subparagraph shall accrue as of thirty days after the performance periods specified in this subparagraph at (i) and (ii), or the date that Defendants halt or abandon work on the SEP, whichever is earlier.

c. Unless the Defendants have paid a stipulated penalty pursuant to subparagraph (b) above, if Defendants fail to comply with the technical specifications enumerated for the SEP in Section VI (Supplemental Environmental Project) or Appendix D (SEP Specifications), Defendants shall pay stipulated penalties for each failure, as follows:

Penalty Per Violation Per Day	Period of Noncompliance
$750.00	1st through 20th Day
$1,500.00	21st through 45th Day
$3,500.00	46th Day and beyond

d. If Defendants transfer a Facility and fail to complete their SEP obligations for that Facility, Defendants shall pay a stipulated penalty of $10,000 for each such Facility where the centralized monitoring system has not been installed and operated and maintained for at least three (3) years, or a stipulated penalty of $7,500 if the centralized monitoring system has been installed, operated and maintained for three (3) years but not the required five (5) years.

51. Except as provided in Paragraphs 50(b) above, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Decree.

52. Defendants shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

53. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Decree.

54. Stipulated penalties shall continue to accrue as provided in Paragraph 51 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

55. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

56. If Defendants fail to pay stipulated penalties according to the terms of this Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

57. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Decree.

58. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Decree.

IX. FORCE MAJEURE

59. "Force majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Decree.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to the United States and EPA, within 72 hours of when Defendants first knew that the event might cause a delay. Within seven days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

61. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will timely notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

63. If Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 59 and 60. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

64. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

65. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within five (5) Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

66. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position

shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

67. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

68. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Decree.

69. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of the Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

70. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Decree, in any dispute brought under Paragraph 66 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Decree; the adequacy of the performance of work undertaken pursuant to this Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Decree, in any other dispute brought under Paragraph 66, Defendants shall bear the burden of demonstrating that their position complies with this Decree and better further the objectives of the Decree.

71. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment

shall be stayed pending resolution of the dispute as provided in Paragraph 54. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

72. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any Facility covered by this Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Decree.

73. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants splits of any samples taken by EPA.

74. Until three (3) years after the termination of this Decree, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

75. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, it shall provide the

following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Decree shall be withheld on grounds of privilege.

76. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

77. This Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

78. This Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging of the Decree.

79. The United States reserves all legal and equitable remedies available to enforce the provisions of this Decree. This Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facilities, whether related to the violations addressed in this Decree or otherwise.

80. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facilities or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 78.

81. This Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendants' compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States

does not, by its consent to the entry of this Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Decree will result in compliance with provisions of the Act, or with any other provisions of federal, state, or local laws, regulations, or permits.

82. This Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Defendants, except as otherwise provided by law.

83. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

XIII. COSTS

84. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIV. NOTICES

85. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing and addressed as follows:

As to the United States by email:

eescdcopy.enrd@usdoj.gov
Re: DJ # No. 90-7-1-09896

As to the United States by mail:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # No. 90-7-1-09896

As to EPA:

UST Team Leader
RCRA Compliance Branch
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

With email copy to: perez.rudolph@epa.gov

As to Defendants:

Alicia Metz
P.O. Box 522
67 Main Street
Millerton, NY 12546
aliciametz1@gmail.com

86. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

87. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

88. The Effective Date of this Decree shall be the date upon which this Decree is entered by the Court or a motion to enter the Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

89. The Court shall retain jurisdiction over this case until termination of this Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

90. Except as otherwise set forth in Note 1 of Appendices A through D, the terms of this Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

91. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 70 (Standard of Review), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

92. After Defendants have completed the requirements of Section V (Compliance Requirements), Section VI (Supplemental Environmental Project) and Section VII (Reporting Requirements), and have complied with all other requirements of this Decree, and have paid the civil penalty and any accrued stipulated penalties as required by this Decree, Defendants may serve upon the United States a Request for Termination. In that Request for Termination, Defendants must state that they have satisfied all requirements of the Decree and must provide all necessary supporting documentation.

93. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

94. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section X (Dispute Resolution). However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until sixty (60) days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

95. This Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Decree without further notice and agree not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

96. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice

certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

97. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

98. This Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

XXII. FINAL JUDGMENT

99. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

100. The following Appendices are attached to and part of this Decree:

"Appendix A" is the list of Facilities Subject to the Consent Decree in New York;

"Appendix B is the list of Facilities to Receive the Electronic Release Detection Equipment in New York;

"Appendix C" is the list of Facilities for the Supplemental Environmental Project in New York, Connecticut and New Hampshire; and

"Appendix D" is the Supplemental Environmental Project: Centralized Monitoring System Specifications.

Dated and entered this __ day of ___________, 2017

____
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

____
Date

ELLEN MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

04-25-2017
Date

RUBEN D. GOMEZ
Bar Roll No. 515640
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4797 (direct)
ruben.gomez@usdoj.gov

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

2/8/17
Date

PAUL SIMON
Acting Regional Counsel
U.S. Environmental Protection Agency, Region 2

2/8/17
Date

RUDOLPH S. PEREZ
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

FOR [DEFENDANTS]
GRJH, Inc

1/19/17
Date

By: [signature]
Alicia Metz

RGCL, Inc

By: X [signature]
James T. Metz, Vice-Pres.

Falcon Petroleum, LLC

By: X [signature]
Lauren Simons, agent for Member.

APPENDIX A

FACILITIES SUBJECT TO THE CONSENT DECREE IN NEW YORK

For purposes of the Decree, "Facility" or "Facilities" shall mean the retail gasoline service stations, individually or collectively, containing one or more USTs owned and/or operated by Defendants and located in the State of New York. Defendants agree that each Facility identified below is subject to the terms of this Consent Decree.

1. **Hillsdale Facility**
   2690 Route 23, Hillsdale, NY 12529

2. **Millerton Facility**
   123 Route 44, Millerton, NY 12546

3. **Stanfordville Facility**
   5886 Route 82, Stanfordville, NY 12581

4. **Valatie Facility***
   3360 Route 9, Valatie, NY 12184

5. **Ghent ("Brick Tavern") Facility**
   812 Route 66, Ghent, NY 12075

6. **Hudson Facility***
   178 Fairview Avenue, Hudson, NY 12534

7. **East Greenbush Facility**
   611 Columbia Turnpike, East Greenbush, NY 12061

8. **Chatham Facility**
   52 Hudson Avenue, Chatham, NY 12037

9. **Congress St. Facility***
   281 Congress Street, Troy, NY 12180

10. **Altamont Facility**
    200 Main Street, Altamont, NY 12009

11. **Cropseyville ("Route 2") Facility***
    4005 Route 2, Cropseyville, NY 12180

12. **Pittstown Facility**
3187 Route 7, Pittstown, NY 12094

13. **Germantown Facility**
4297 Route 9G, Germantown, NY 12526

14. **Troy/Mill St. Facility**
125 Mill Street, Troy, NY 12180

15. **Troy/Hoosick St. Facility***
558 Hoosick Street, Troy, NY 12180

16. **Clifton Park (“Exit 9”) Facility**
601 Plank Rd, Clifton Park, NY 12065

17. **Queensbury/Aviation Rd. (“Exit 19”) Facility**
532 Aviation Road, Queensbury, NY 12804

18. **Ballston Lake (“Exit 11”) Facility***
10 Round Lake Road, Ballston Lake, NY 12019

19. **Queensbury/Main St. (“Exit 18”) Facility***
107 Main Street, Queensbury, NY 12804

20. **Queensbury/Quaker Rd. (“Quaker & Bay”) Facility***
234 Quaker Road, Queensbury, New York

21. **Johnstown Facility**
100 S. Comrie Avenue, Johnstown, NY 12095

22. **Gloversville/W. Fulton St. Facility**
209 West Fulton Street, Gloversville, NY 12078

23. **Gloversville/E. Fulton St. Facility**
113 East Fulton St, Gloversville NY 12078

Note 1
Modifications to Appendix A: This list of facilities may be revised only upon Defendants submitting a written request to EPA pursuant to Section XIV (Notices) and obtaining written approval from EPA. For purposes of Section XVII (Modification) of the Decree, such a revision shall not be deemed a modification to the Decree.

Note 2

Facility Identification: In the event that a question arises about the identification or location of a Facility, the parties shall resort to the facility registration numbers assigned by the State of New York.

Note 3

The subset of these Facilities that are identified in the Complaint are denoted with an asterisk.

APPENDIX B

FACILITIES TO RECEIVE THE ELECTRONIC RELEASE DETECTION EQUIPMENT IN NEW YORK

1. **Valatie Facility***
   3360 Route 9, Valatie, NY 12184

2. **Congress St. Facility***
   281 Congress Street, Troy, NY 12180

3. **Troy/Hoosick St. Facility***
   558 Hoosick Street, Troy, NY 12180

4. **Queensbury/Main St. ("Exit 18") Facility***
   107 Main Street, Queensbury, NY 12804

5. **Chatham Facility**
   52 Hudson Avenue, Chatham, NY 12037

6. **Gloversville/W. Fulton St. Facility**
   209 West Fulton Street, Gloversville, NY 12078

7. **Gloversville/E. Fulton St. Facility**
   113 East Fulton St, Gloversville NY 12078

Note 1
Modifications to Appendix B: This list of facilities may be revised only upon Defendants submitting a written request to EPA pursuant to Section XIV (Notices) and obtaining written approval from EPA. For purposes of Section XVII (Modification) of the Decree, such a revision shall not be deemed a modification to the Decree.

Note 2
Facility Identification: In the event that a question arises about the identification or location of a Facility, the parties shall resort to the facility registration numbers assigned by the State of New York.

APPENDIX C

FACILITIES FOR THE SUPPLEMENTAL ENVIRONMENTAL PROJECT IN NEW YORK, CONNECTICUT AND NEW HAMPSHIRE

1. **All 23 Facilities in New York identified on Appendix A**

2. **Meriden Facility (Connecticut)**
   1801 N. Broad Street, Meriden, CT 06450

3. **Harwinton Facility (Connecticut)**
   207 Birge Park Road, Harwinton, CT 06791

4. **Canterbury Facility (New Hampshire)**
   125 W. Road, Canterbury, NH 03224

Note 1
Modifications to Appendix C: This list of facilities may be revised only upon Defendants submitting a written request to EPA pursuant to Section XIV (Notices) and obtaining written approval from EPA. For purposes of Section XVII (Modification) of the Decree, such a revision shall not be deemed a modification to the Decree.

Note 2
Facility Identification: In the event that a question arises about the identification or location of a Facility, the parties shall resort to the facility registration numbers assigned by the State of New York.

APPENDIX D

SUPPLEMENTAL ENVIRONMENTAL PROJECT: CENTRALIZED MONITORING SYSTEM SPECIFICATIONS

To perform a Supplemental Environmental Project (SEP), Defendants shall install, operate and maintain a centralized monitoring system that collects data generated by the release detection monitoring equipment on USTs owned and/or operated by Defendants and electronically transmits it to at least one central location pursuant to the requirements of Section VI (Supplemental Environmental Project) of this Decree, and in accordance with the specifications and criteria identified in this Appendix.

A. Equipment: The centralized monitoring system SEP shall be installed at the Appendix C Facilities, and shall be equipped with the following components:

1. Centralized Monitoring Equipment: Various instruments capable of transmitting by standard Ethernet connection the data generated by the electronic release detection monitoring equipment installed pursuant to Section V (Compliance Requirements) of this Decree. The centralized monitoring equipment requires:

(i) Installing Ethernet Port Server Consoles and associated monitoring hardware at each Appendix C Facility;

(ii) Connecting Ethernet Port Server Modules on existing tank sensors;

(iii) Configuring Ethernet Port Server Modules to Ethernet connection at each Appendix C Facility (with internet access to be provided to each Appendix C Facility); and

(iv) Programming tank monitors to communicate with Ethernet Port Server system.

2. Remote Fuel Management Software: Software compatible with existing UST-monitoring hardware, such as Franklin Systems Sentinel or equivalent software, and capable of collecting data generated by the electronic release detection monitoring equipment installed pursuant to Section V (Compliance Requirements) of this Decree, and transmitting it in real-time to the central monitoring location(s).

3. The above-described components of a centralized monitoring system represent eligible SEP costs. Other costs, such as those related to the cost of purchasing and installing new release

detection monitoring equipment and conducting site work upgrades, are not considered eligible SEP costs.

B. Performance Requirements: The following performance requirements apply to the centralized monitoring system SEP.

3. The centralized monitoring equipment used in this SEP must be capable of collecting and storing all data generated by the release detection monitoring equipment installed pursuant to Section V (Compliance Requirements) of this Decree and electronically transmitting it from each Facility to a monitoring console located in the office of Defendants' central location at ________________, and/or in the office of Defendants' Vendor located at ____________________ ("Central Office(s)"). All data shall mean all data required to be generated by Section V (Compliance Requirements) of this Decree, consisting of release detection monitoring reports for each UST system and its associated piping, alarm data, and line leak detector test data.

4. The remote fuel management software used for the centralized monitoring system SEP must be capable of collecting, in real-time, all "FUEL ALARM," "ALARM," or "ACTIVE" data collected by the release detection monitoring equipment installed pursuant to V (Compliance Requirements) of this Decree, and electronically transmitting it to the Central Office(s).

5. Although the electronic release detection monitoring equipment required by Section V (Compliance Requirements) is not a part of the SEP, the centralized monitoring system SEP must be capable of collecting and storing all data generated by release detection monitoring equipment, such as a "FUEL ALARM," "ALARM," "ACTIVE" or other data readings that may indicate a release of a regulated substance. Once the centralized monitoring system SEP reports such a condition, Defendants shall immediately notify on-site personnel who can take immediate action (for example, inspect sumps and turn off dispensers) to minimize the effects of a suspected release, and shall investigate the "Fuel Alarm," "Alarm," "Active" data or other condition in accordance with the "system test" or "site check" procedures laid out in 40 C.F.R. § 280.52. Within 24 hours of discovery of a suspected or confirmed release of petroleum or petroleum based substance, Defendants must provide the required notifications to the appropriate State officials (in New York State, the Spill Hotline is 1-800-457-7362). Also, Defendants shall provide EPA with a record that timely notification has been provided to the State officials and a record of the spill number that State officials have assigned to the matter. Defendants shall address the condition and conduct any necessary response and repair work in accordance with the requirements set forth at 40 C.F.R. §§ 280.50-280.52 or applicable State regulations if the matter is in Connecticut or New Hampshire.

C. Operation: Defendants shall operate and maintain in good working condition the centralized monitoring system and remote fuel management software described herein in accordance with manufacturers' recommendations for a period of not less than five (5) years from the commencement of operations for the Facilities, starting no later than fifteen (15) months after the Effective Date, in accordance with Section VI (Supplemental Environmental Project) of this Decree. Defendant shall submit SEP O&M Annual Certifications to the United States in accordance with Section VI (Supplemental Environmental Project) of this Decree.

D. Record Retention: All reports and data generated by release detection monitoring equipment at each Facility shall be electronically transmitted to the Central Office(s) and shall be retained at the Central Office(s) for a minimum of five (5) years from the termination of this Decree pursuant to Section XVIII of the Decree. Reports shall be available to EPA upon request.

Note 1

Modifications to Appendix D: The schedules for completion of the SEP may be revised only upon Defendants submitting a written request to EPA pursuant to Section XIV (Notices) and obtaining written approval from EPA. For purposes of Section XVII (Modification) of the Decree, such a revision shall not be deemed a modification to the Decree.